IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.699 OF 2007

Vazir Glass Works Limited ....Petitioner

V/s.

Their Workmen,
C/o.Mr. Bharat R. Tayade ....Respondent

Mr.S.K. Taisania i/b Rahul L. Nerlekar for Petitioner.
Mr.Arshad Shaikh with Piyush Shah for Respondent.

CORAM : V.M. KANADE, J.

DATED : 28th MARCH, 2007.

P.C.:

1. Heard learned counsel appearing behalf of the Petitioner and learned counsel appearing of behalf of the Respondent.

2. The Petitioner takes exception to an order passed by the Industrial Tribunal dated 01/12/2006 in application below Ex.U-4 which was taken out in the reference(IT)No.12/2000.

3. Brief facts which are relevant for deciding this petition are as under:-

An application was made in the said reference by the workmen seeking interim relief of Rs.3000/- p.m. There is a chequered history of

litigation between the parties. Initially, Vazir Glass Works Limited had issued closure notice which was challenged and contested upto the Supreme Court. However, first party's contention that it had no connection with competitor which is operating from Ahmadabad was not accepted and therefore, said contention was rejected and closure notice was dismissed. It is the contention of the Petitioner herein that the Petitioner Company is not carrying on manufacturing activities since 1992. Thereafter, as of today, there are 28 workmen who are working in the Vazir Glass Works Limited and though it was not necessary for the first party to issue closure notice under Section 25 O of the Industrial Disputes Act, 1947, yet notice was issued and that dispute is also pending in the court.

4. In the meantime, fresh charter of demand was made by the workmen in which they asked for enhancement of wages. Initially, reference was not made by the Commissioner and therefore, the workmen filed writ petition in this court and this Court thereafter, directed the Commissioner that reference should be made to the Industrial Tribunal.

5. In this reference which was filed in the year 2000, an

application has been filed for interim relief. The Tribunal has passed impugned order directing the Company to pay Rs.1000/- p.m. to 28 workmen with effect from 18/10/2001 till the disposal of the main reference.

6. The learned counsel for the Petitioner has submitted that the Tribunal has not given any reasons in its order and has not considered crucial question whether the company is carrying on any activities or has stopped manufacturing activities since 1992. He submitted that the Tribunal, without considering this vital issue, has directed that the Company should pay interim relief at the rate of 1000/- p.m. He invited my attention to the order of Division Bench of this Court wherein direction was given by this Court to the Commissioner to refer the matter. He further submitted that the stand taken by the Petitioner was that there was dispute regarding question whether the Petitioner is carrying on manufacturing activities or not and on this basis reference was made. He submitted that however, in the interim application it has been admitted that the Company came to be closed in 1992. He submitted that the Tribunal ought to have taken into consideration this vital admission which was given by the workmen and accordingly, thereafter decided the

question whether interim relief should be granted or not.

7. Shri. Shaikh learned counsel appearing on behalf of Respondent submitted that earlier notice of closure was rejected, primarily, because it was brought to the notice of the Court that no manufacturing activities were carried on by this unit and Company had transferred its work to the unit in Ahmadabad and therefore, both these units have functional integrity. He submitted that this court in case of **Maharashtra General Kamgar Union V/s. Vazir Glass Works Ltd. & ors. reported in 1996 II CLR 990** in para 14 of the said judgment dealt with this aspect and, thereafter, has rejected the contention of the Petitioner herein and closure notice was dismissed. He invited my attention to the unreported judgment of this court in the case of **M/s. Walchandnagar Industries Ltd V/s. Construction Employees' Union & Anr.** wherein the learned Single Judge of this court had dismissed petition filed by the Company against grant of interim relief awarded by the Tribunal by holding that interim order did not finally decide rights of the parties and should be subject to the final award and that learned single Judge had also observed that if the employer succeeded, amount which was paid to the workmen should be deducted from the future

wages which were to be paid.

8. Shri. Taisania learned counsel for the Petitioner submitted that Single Judge in the case of **M/s. Walchandnagar Industries Ltd V/s. Construction Employees' Union & Anr** had not altered finding which is given by the Tribunal in respect of two units that they are two different entities namely the Petitioner Company and Neutral Glass & Allied Works. He submitted that this finding had not been altered by the learned single Judge while passing the aforesaid order.

9. Taking into consideration the submissions made by the learned counsel appearing on behalf of the Petitioner and the learned counsel appearing on behalf of the Respondent, I am of the view that though order of the Tribunal is not happily worded, it has taken into consideration in para 7 and 8 of its order the observations which are made by this Court in the writ petition No. 878/96 but more particularly, in para 14 and 22. It can not be, therefore, said that order passed by the Tribunal is not a reasoned order and in stead of reproducing entire catena of judgments of various courts in various proceedings, it has referred to relevant portions of the order passed by this Court in writ petition No.878/96. It is

no doubt true that in para 22, it has been clarified by the Division Bench that findings recorded by the Tribunal had not been altered. However, facts remain that notice of closure was dismissed and contention of the Petitioner herein was not accepted that there were two separate entities. Facts however, remain that these issues will have to be considered by the Tribunal while deciding the main reference.

10. Taking into consideration peculiar facts and circumstances of the case and the facts that consumer index has gone up in the last 15 to 20 years and also taking into consideration facts that the Company has incurred losses as alleged by the Petitioner, ends of justice would be met if the impugned order is modified partly.

11. In the result writ petition is partly allowed. Order passed by the Tribunal is modified and first party Company is directed to pay Rs.1000/- per month to 28 workmen each who are parties to the reference with effect from January,2006 till disposal of main reference. Arrears from January, 2006 shall be paid to each workmen or deposited in the Industrial Tribunal within two months from this order.

12. It is clarified that in the event, the Petitioner succeeds, amount

which was paid to the workmen shall be adjusted in their future wages. All contentions of both the parties shall be kept open. Tribunal is directed to expeditiously decide the main reference. It is further clarified that if the amount is deposited by the Company in the Court, the workmen would be entitled to withdraw this amount.

. Writ Petition is, accordingly, disposed of.

V.M. KANADE, J.